



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,981	11/21/2003	Joshua D. Hug	108417.00081/RN140	1738
63125	7590	02/09/2009	EXAMINER	
HOLLAND & KNIGHT LLP 10 ST. JAMES AVENUE BOSTON, MA 02116			MURDOUGH, JOSHUA A	
			ART UNIT	PAPER NUMBER
			3621	
			MAIL DATE	DELIVERY MODE
			02/09/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

<b>Application No.</b> 10/719,981	<b>Applicant(s)</b> HUG ET AL.	
<b>Examiner</b> JOSHUA MURDOUGH	<b>Art Unit</b> 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 13 November 2008.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-31 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/28/2008.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_

Art Unit: 3621

## **DETAILED ACTION**

### ***Continued Examination Under 37 C.F.R. §1.114***

1. A request for continued examination (“RCE”) under 37 C.F.R. §1.114, including the fee set forth in 37 C.F.R. §1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. §1.114, and the fee set forth in 37 C.F.R. § 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 C.F.R. §1.114. Applicant's submission filed on 21 November 2008 has been entered.

### ***Acknowledgements***

2. This action is responsive to the above noted RCE of 21 November 2008 containing an affidavit under 37 C.F.R. 131 and evidence in support of the affidavit.
3. Claims 1-31 remain pending and have been examined.

### ***Affidavit Under 37 C.F.R. §1.131***

4. The affidavit and evidence filed on 13 November 2008 under 37 C.F.R. §1.131 (“Nov. 2008 Affidavit”) has been considered but is ineffective to overcome the Medvinsky reference (US 2005/0022019).
5. As per MPEP § 715.07(c), “[t]he 37 CFR 1.131 affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were carried out in this country or in a NAFTA country or WTO member country.” The Nov. 2008 Affidavit fails to allege that the actions were in a NAFTA or WTO country.

Art Unit: 3621

6. Also, the details of the Invention Disclosure Form (Exhibit A) are not sufficient to show all of the claim limitations presently presented. There is no discussion of the elapsed or allotted playback durations as claimed throughout. In order to establish conception “the invention must be ready for patenting . . . by proof that prior to the critical date the inventor had prepared drawing or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention” (MPEP § 706.02(1)(2) I Example 8). The lack of discussion about the allotted and elapsed playback durations and the calculations using these values results in the disclosure of Exhibit A being insufficiently specific to enable a person skilled in the art to practice the invention. Therefore, it is the Examiner's factual determination that Exhibit A does not show the conception of the claimed invention.

7. Also, the quality of the third page of each copy of the Nov. 2008 Affidavit makes them more difficult to read. This is especially true of the one by Joshua Hug. The date and signature are virtually illegible.

8. While the Examiner has considered the Nov. 2008 Affidavit, for the reasons above, the Nov. 2008 Affidavit is deemed ineffective to overcome the Medvinsky reference. Thus, the Medvinsky reference has been used in the following rejections.

### *Claim Objections*

9. Claim 5 is objected to because of the following informalities: it appears a typographic error was made and the “T” was left off in the first word. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-5, 10-31 are rejected under 35 U.S.C. §102(e) as being anticipated by Medvinsky (2005/0022019).

12. As to claim 1, Medvinsky shows: In a client device, a method comprising:

- a. receiving a request for playback of digital audio or video content stored on the device (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.);
- b. determining an allotted playback duration for the device (Figure 4, 304);
- c. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while rendering digital audio or video content (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit);
- d. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (Figure 4, 306); and

Art Unit: 3621

- e. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (Figure 4, 300).
13. As to claim 2, Medvinsky further shows:
- f. the request for playback of digital audio or video content is received via a user input device (Paragraph 0030, set-top box which allows for user input).
14. As to claim 3, Medvinsky further shows:
- g. determining an elapsed playback duration for the device further comprises: determining a current elapsed playback duration for the device; determining a rendering time representing an amount of time it takes for the digital audio or video content to be rendered by the client device; and adding the rendering time to the current elapsed playback duration to obtain a new elapsed playback duration (Figure 4, 305-307; If the “play time” in 306 were not updated in this manner, there would be an infinite loop created by these steps.).
15. As to claim 4, Medvinsky further shows:
- h. playback of the requested digital audio or video content track is denied if it is determined that the relationship between the allotted playback duration and elapsed playback duration is satisfied (Figure 4, 305-307; where the “part” 307 is understood to be a track).

Art Unit: 3621

16. As to claim 5, Medvinsky further shows:
  - i. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the allotted playback duration (Figure 4, 305-307; decryption facilitates the playback).
  
17. As to claim 10, Medvinsky further shows:
  - j. denying playback of additional digital audio or video content stored on the device in addition to the requested digital audio or video content if it is determined that the elapsed playback duration is equal to or exceeds the allotted playback duration (Figure 4, 306 & 314).
  
18. As to claim 11, Medvinsky further shows:
  - k. the allotted playback duration is determined based upon predetermined rights associated with the device (Paragraph 0038).
  
19. As to claim 12, Medvinsky further shows:
  - l. the allotted playback duration is determined based upon data received from the content rights server (Paragraph 0050).
  
20. As to claim 13, Medvinsky further shows:

Art Unit: 3621

m. periodically increasing the allotted playback duration prior to the allotted playback duration exceeding the elapsed playback duration (Paragraph 0042, As shown in the reference, the time is updated periodically with examples of 5 and 15 minutes given.).

21. As to claim 14, Medvinsky further shows:

n. the allotted playback duration is increased based upon entitlements granted to the user by a service provider (Figure 4, 310-312, Multiple plays are allowed by the provider, and the effective playback duration is extended for each play used.) .

22. As to claim 15, Medvinsky shows: In a digital content rendering device, a method comprising:

o. rendering one of a plurality of audio or video content items (Paragraph 0015);

p. determining an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit); and

q. regulating further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration (Figure 4, 300).

23. As to claim 16, Medvinsky further shows:



Art Unit: 3621

r. the elapsed playback duration represents by an amount of time for which content has been rendered by the digital content rendering device (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit).

24. As to claim 17, Medvinsky further shows:

s. the elapsed playback duration represents a quantity of data processed by the digital content rendering device to render content on the device (Paragraph 0058).

25. As to claim 18, Medvinsky further shows:

t. regulating comprises denying further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to the allotted playback duration (Figure 4, 314).

26. As to claim 19, Medvinsky further shows:

u. the allotted playback duration represents at least one of an amount of render time for which content may be rendered on the digital content rendering device, and a quantity of data that may be processed by the digital content rendering device to render content on the device (There is inherently a relationship between the playback duration and the quantity of data processed, known as bit rate, and therefore, the time of the playback represents the data processed.).

Art Unit: 3621

27. As to claim 20, Medvinsky further shows:

v. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the amount of render time corresponding to allotted playback right (Figure 4, 300).

28. As to claim 21, Medvinsky further shows:

w. regulating further content rendering comprises facilitating content rendering at a reduced level of functionality or quality if the elapsed playback duration satisfies a predetermined relationship with respect to the allotted playback right (Paragraph 0060).

29. As to claim 22, Medvinsky shows: In a digital content rendering device, a method comprising:

x. identifying a playback right associated with the digital content rendering device representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering device (Figure 4, 304);

y. determining whether the allotted measure of content has been rendered by the device (Figure 4, 306); and

z. preventing further content rendering on the digital content rendering device if it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

Art Unit: 3621

30. As to claim 23, Medvinsky further shows:
  - aa. the allotted measure of digital audio or video content that may be rendered represents an amount of time that the digital content rendering device may render the digital audio or video content (Paragraph 0014).
  
31. As to claim 24, Medvinsky further shows:
  - bb. the playback right associated with the digital content rendering device is further associated with a user, (Paragraph 0014); and
  - cc. wherein the user is denied playback of any additional content items by the digital content rendering device once it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).
  
32. As to claim 25, Medvinsky further shows:
  - dd. the playback right is determined based upon a subscription agreement between the user and a content provider (Paragraph 0041, A subscriber is mentioned, and in order to be a subscriber there has to be some agreement with the provider.).
  
33. As to claim 26, Medvinsky shows: A digital content rendering apparatus comprising:
  - ee. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the apparatus to receive a request for playback of digital audio or video content stored on the apparatus (Figure 4, 305 & Paragraph 0054; the

Art Unit: 3621

decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.),

ff. determine an allotted playback duration for the apparatus (Figure 4, 304);

gg. determine an elapsed playback duration for the apparatus, the elapsed playback duration representing an amount of time previously consumed by the apparatus while rendering digital audio or video content (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit);

hh. determine whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the apparatus is satisfied (Figure 4, 306);

ii. regulate playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the apparatus is determined to be satisfied (Figure 4, 300); and

jj. at least one processor coupled with the storage medium to execute the programming instructions (Paragraphs 0068-0069).

34. As to claim 27, Medvinsky shows: A digital content rendering apparatus comprising:

kk. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the apparatus to render one of a plurality of audio or video content items (Paragraph 0015);

ll. determine an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit); and

Art Unit: 3621

mm. regulate further content rendering by the digital content rendering apparatus if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration; and at least one processor coupled with the storage medium to execute the programming instructions (Figure 4, 300).

35. As to claim 28, Medvinsky shows: A digital content rendering apparatus comprising:

nn. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the digital content rendering apparatus to identify a playback right associated with the digital content rendering apparatus representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering apparatus (Figure 4, 304);

oo. determine whether the allotted measure of content has been rendered by the apparatus,(Figure 4, 306);

pp. prevent further content rendering on the digital content rendering apparatus if it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering apparatus has previously been rendered by the apparatus (Figure 4, 300); and

qq. at least one processor coupled with the storage medium to execute the programming instructions (Paragraphs 0068-0069).

Art Unit: 3621

36. As to claim 29, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

rr. receiving a request for playback of digital audio or video content stored on the device (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.);

ss. determining an allotted playback duration for the device (Figure 4, 304);

tt. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while rendering digital audio or video content (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit);

uu. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (Figure 4, 306); and

vv. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (Figure 4, 300).

37. As to claim 30, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

ww. rendering one of a plurality of audio or video content items (Paragraph 0015);

Art Unit: 3621

xx. determining an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the “play time” or playback duration has to be determined to compare it to the playback time limit); and

yy. regulating further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration (Figure 4, 300) .

38. As to claim 31, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

zz. identifying a playback right associated with the digital content rendering device representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering device (Figure 4, 304);

aaa. determining whether the allotted measure of content has been rendered by the device (Figure 4, 306); and

bbb. preventing further content rendering on the digital content rendering device if it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

Art Unit: 3621

***Claim Rejections - 35 USC §103***

39. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

40. Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky in view of Belknap (5,586,264).

41. As to claims 6 and 7, Medvinsky shows as discussed above. Medvinsky does not directly disclose the displaying of control values to the user.

42. Belknap teaches the elapsed playback duration (Column 20, lines 6-7) and the allotted playback duration (Column 20, line 15) being shown to the user. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky to include the displaying of this information for the purpose of allowing the user to make informed decisions during the playback in regards to the use of the remainder of the allotted time.

43. As to claim 8, Medvinsky further shows:

ccc. the digital audio or video content is encoded in accordance with at least one of an advanced audio encoding algorithm, an adaptive multi-rate encoding algorithm and an MP3 encoding algorithm (Paragraph 0012, MPEG-4 is and adaptive multi-rate encoding algorithm.).



Art Unit: 3621

44. Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky in view of Blonder (5,708,422). Medvinsky discloses as discussed above. Medvinsky does not disclose: denying playback of the requested digital audio or video content if the elapsed playback duration added to a run length associated with the requested content exceeds the allotted playback duration.

45. Blonder teaches a credit account where an additional charge is not allowed if it would cause the account to go over its limit (Column 12, lines 18-21). There is a strong correlation to the instant application. The time is paid for and creates a limit. As the time is used, the balance increases until it reaches the limit. Any transactions, additional viewing, that would cause the balance, elapsed time, to exceed the limit, allowed time, are therefore denied. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky to include a transaction system as described by Blonder in order to prevent the usage of contents beyond the rights issued, which corresponds to not exceeding the limit (Blonder, Column 12, lines 18-21).

#### ***Claim Interpretations***

46. Applicants are reminded that optional or conditional elements (*e.g.* claim 31 which recites "audio or video content that may be rendered by the digital content rendering device ") do not narrow the claims because they can always be omitted. See *e.g.* MPEP §2106 II C.:  
“Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

Art Unit: 3621

[Emphasis in original.]”; and *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006) (“As a matter of linguistic precision, optional elements do not narrow the claim because they can always be omitted.”).

47. If a positive recitation is desired and if Applicant(s)' original specification supports such an amendment, the Examiner respectfully suggests amending the claim to recite the actual rendering.

48. In the Definitions section below, the Examiner has provided dictionary definitions for words that may indicate that a limitation is not positively recited or may be interpreted in a way other than desired by Applicants.

### ***Definitions***

49. The Examiner hereby adopts the following definitions under the broadest reasonable interpretation standard. In accordance with *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997), the Examiner points to these other sources to support his interpretation of the claims.<sup>1</sup> Additionally, these definitions are only a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language. Finally, the following list is not intended to be exhaustive in any way:

***Associate***: “4 : to bring together or into relationship in any of various intangible ways (as in memory or imagination).” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

---

<sup>1</sup> While most definition(s) are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

Art Unit: 3621

***Couple***: “2 a : to fasten together : LINK.” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

***Enable***: “1 a : to provide with the means or opportunity... b : to make possible, practical or easy” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

***Facilitate***: “to make easier.” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

***If***: “1 a : in the event that” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield, M.A., 1986.

***Indicate***: “1 c : to demonstrate or suggest the necessity or advisability of.” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

***May***: “1 a archaic : have the ability to” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield, M.A., 1986.

***To***: “2a -- used as a function word to indicate purpose, intention, tendency, result, or end.” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

### ***Response to Arguments***

50. Applicants' arguments filed 21 November 2008 have been fully considered but they are not persuasive.

Art Unit: 3621

51. Applicants have argued that the affidavit under 37 C.F.R 131 filed on 21 November 2008 has established the date of the current invention prior to the reference date of the Medvinsky reference.

52. For the reasons noted above, the Examiner respectfully disagrees.

### *Conclusion*

53. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 C.F.R. §1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 C.F.R. §1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of the RCE noted above and the submission under 37 C.F.R. §1.114. See MPEP § 706.07(b). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

54. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3621

55. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The Examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua Murdough  
Examiner, Art Unit 3621

/ANDREW J. FISCHER/  
Supervisory Patent Examiner, Art Unit 3621